IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/02/2003

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

C.R.P.PD.No.101 OF 2002 AND C.R.P.PD.NO.102 OF 2002

D.Devendran ... Petitioner

-Vs-

1.Nachimuthu Gounder
2.Pappathi
3.Jothi ... Respondents

(Respondents 2 and 3 are given up
as unnecessary parties)

Revisions against the orders dated 08.10.2001 and 30.10.2001
made in I.A.No.789 of 2001 in O.S.No.350 of 1982 and Copy Application No.19 71
of 2001 in O.S.No.350 of 1982 respectively on the file of the Principal
District Munsif's Court, Bhavani.

!For petitioner : Mr.T.Muruga Manickam

^For 1st respondent : Mr.A.K.Kumarasamy

:O R D E R

Petitioner is the fourth defendant in the suit in O.S.No.350
of 198 2, filed by the respondent for recovery of money, due on a promissory
note.
2. Earlier, the said suit was dismissed for default. On
hearing the news that the said suit was restored and also an exparte decree
was passed without his knowledge, the petitioner filed two applications, one
for seeking permission to search for the records relating to the above suit
and the other for certified copies of 'B' Diary extract, relating to the suit.
The application for search memo was dismissed on the ground that there was no
urgency and the application for grant of certified copies of 'B' Diary extract
was dismissed on the ground that the said diary extract was a confidential
matter and therefore, the same could not be granted. It is against these
orders, the petitioner/fourth defendant has filed these Civil Revision
Petitions.
3. The facts in brief are as follows :
The suit for recovery of money was filed by Nachimuthu

Gounder/ respondent herein against the petitioner's father in O.S.No.350 of 1982, due on a promissory note. Pending the suit, the petitioner's father died. So, the petitioner, his mother Papathy and sister Jothi were brought on record as legal representatives. A written statement was filed and issues were framed.

4. On 18.08.1988, the plaintiff's counsel reported no instructions. Hence, the suit was dismissed for default. A petition in I.A.No.14 19 of 1988 was filed under Section 5 of the Limitation Act to condone the delay in presenting the petition to restore the suit. The delay was condoned on condition that the plaintiff should pay costs of Rs.150/- on or before 07.03.1989. However, the conditional order was not complied with and therefore, the application in I.A.No.1419 of 1988 was dismissed on 07.03.1989.

5. On 10.09.1998, an application in I.A.No.525 of 1999 was filed to condone the delay of 10 years and 23 days in filing the petition to restore the suit. Another application in I.A.No.526 of 1999 was filed to restore the suit, which was dismissed for default on 18.08.1988.

6. The previous counsel for the defendant represented that since the petition was coming after 10 years, notice should be sent to the parties. Accordingly, notice was sent to the defendants. On the instructions of the petitioner/fourth defendant, counsel Mr.A.M.Meeran Sahib filed vakalat. On 10.09.1999, a counter was filed on behalf of the defendants, opposing the application to condone the delay for restoration of the suit. Strangely, when the matter came up before the trial Court on 28.02.2001, Mr.A.M.Meeran, counsel for the defendant, made an endorsement "I have no objection to allow this petition". On the same day, the application was allowed merely on the said endorsement. Then, the matter was adjourned to 08.03.2001 for filing written statement. Again, it was adjourned for written statement from 08.03.2001 to 15.03.2001. On 15.03.2001, written statement was not filed. Therefore, the trial Court set the de fendants exparte and posted the matter for evidence on behalf of the plaintiff on 28.03.2001. When the matter was taken up on 28.03.2001, the trial Court, on perusal of records, found that the written statement was already filed and thereafter, issues were also framed as early as on 20.11.1987 itself. Then, the trial Court suo motu set aside the exparte decree; reopened the case and took up the case for trial on the same day. P.W.1, son of the plaintiff, was examined and Ex.A-1 was marked. The trial Court posted the matter for judgment on 09.04.2001. On 09.04.2001, judgment was pronounced, directing the defendants to pay a sum of Rs.12,000 /- to the plaintiff within two months and in default, to pay a sum of Rs.14,000/- in three months. These developments were not at all known to the defendants. But, when the plaintiff spread a rumour in the village that he had got a decree against the defendants, the petitioner/fourth defendant approached the Court through some other counsel and filed two applications, one for search memo and the other for certified copy of 'B' Diary extract, in order to know the real situation. Those two applications were dismissed through two separate orders, on the ground that there was no urgency for search memo and 'B' Diary extract could not be given as it was confidential. Challenging the same, these Civil Revision Petitions have been filed.

7. Learned counsel for the petitioner, through the affidavit sworn to by the petitioner/fourth defendant, would emphatically state that the defendants had never given instructions to the counsel A.M. Meeran to say 'no objection' for condoning delay application in I.A.No.525 of 1999 and restoration application in I.A.No.526 of 1999 and as such, a fraud had been committed by him.

8. On the basis of the affidavit, this Court called for the records. On a perusal of the records, it is clear that the trial Court had hurriedly passed an order of decree in favour of the plaintiff, without following the procedural law. It is noticed that the suit was filed in the year 1982 by the plaintiff against the defendant's father. After his death, the petitioner, his mother and sister were brought on record as legal representatives. The written statement was filed in time and issues were also framed on 20.11 .1987. When the matter came up for trial, the plaintiff's counsel reported no instructions on 18.08.1988. Therefore, the suit was dismissed for default. Thereafter, an application was filed in I.A.No.1419 of 1988 to condone the delay of 8 days in presenting the petition to restore the suit. After hearing the counsel for the parties, this application was ordered on condition that the plaintiff should pay costs of Rs.150/- on or before 07.03.1989. Admittedly, the said costs were not paid. Therefore, the application in I.A.No.1419 of 1988 to condone the delay was ultimately dismissed on 07.03.1989. The plaintiff thereupon kept quiet all along and after 10 years, he filed two applications, one in I.A. No.525 of 1999 to condone the delay of 10 years and 23 days in filing the petition to restore the suit, which was dismissed for default on 1 8.08.1988 and the other in I.A.No.526 of 1999 for restoration of the suit. It is not known as to how these applications were entertained, even though there was no application to restore the petition in I.A.No.1419 of 1988, which was dismissed for non-co mpliance on 07.03.1989 . Even in these applications in I.A.Nos.525 of 1999 and 526 of 1999, the defendant instructed the counsel Mr.A.M.Meeran to oppose the same. Accordingly, a counter affidavit had been filed on 10.09.1999. The same was pending for a long time. Suddenly, without the knowledge of the petitioner/defendant, on 28.02.2001, Mr.A.M.Meeran, counsel for the defendant, made an endorsement saying that he had no objection for allowing these applications and on the same day, the applications were allowed in view of the endorsement having been made.

9. The trial Court did not care to ascertain with the defendant whether such instruction to say no objection was given to the counsel, especially when a counter was filed and it was available on record. Furthermore, the applications in I.A.Nos.525 and 526 of 1999 to condone the delay and for restoration of the suit cannot be straightaway allowed, since already similar application was filed in I.A.No.1419 of 1988 and the same was dismissed for default for not complying with the conditional order. As such, it has to be held that the entertainment of the applications to condone the delay and to restore the suit, which was dismissed for default on 18.08.1988, and ordering the same is ex facie illegal, since it would amount to bypassing the judicial order made in I.A.No.1419 of 1988 on 07.03.1989.

10. Another illegality this Court would notice in this case is that after allowing the applications in I.A.Nos.525 and 526 of 1999, the trial Court adjourned the matter to 08.03.2001 for filing written statement

and again to 15.03.2001 for the same reason. On 15.03.2001, the trial Court set the defendants exparte as they were called absent, thinking that no written statement had been filed and posted the matter for evidence on 28.03.2001. As a matter of fact, the written statement had already been filed and issues were framed in the year 1987 itself. Only on 28.03.2001, when the matter came up for evidence, the trial Court found that already written statement was filed and issues were framed. Immediately on the same day, the trial Court suo motu set aside the exparte decree; reopened the case; examined P.W.1 and recorded his evidence. Observing that there was no oral evidence on behalf of the defendants, the trial Court posted the matter for judgment on 09.04.2001. In fact, the records would reveal that P.W.1 was cross-examined by counsel Mr.A.M.Meeran.

11. Once the trial Court had thought it fit to set aside the exparte decree, then, it ought to have adjourned the matter to a future date for trial, since the date had not been fixed to enable the parties to proceed under Order 17 Rule 2 CPC.

12. Admittedly, P.W.1 is not the plaintiff. The defendant was not available on that day. It is also noticed that counsel for the defendant Mr.A.M.Meeran was allowed to cross-examine P.W.1. Strangely, cross-examination was not done by the counsel in line with the defendant's case, as stated in the written statement. A perusal of the cross-examination would show that it was done as if the defendant admitted the liability and he was ready for submitting to the decree.

13. The above factors would clearly show that both the trial Court Judge and Mr.A.Meeran, counsel for the defendant, had not followed the ethics of their respective positions and hurriedly acted in an improper manner with anxiety to see that decree was passed in favour of the plaintiff.

14. The petitioner also filed a separate affidavit stating that a fraud had been committed on him. On noticing this, this Court felt it necessary to summon the counsel Mr.A.M.Meeran to know as to what really had happened. Accordingly, notice was issued to him and he came and appeared before this Court. He filed two affidavits dated 20.1 2.2002 and 27.12.2002, admitting his mistake and requesting for unconditional apology. Mr.A.M.Meeran, counsel, also stated that the mistake committed by him was so serious and he would never commit such a mistake in future and as such, he is ready to receive any punishment that may be imposed by this Court.

15. With reference to the mistakes committed by the counsel for the defendant, learned counsel for the petitioner would submit that he is not interested in punishing the earlier counsel Mr.A.M.Meeran for the misconduct in his profession, but he is interested only in defending the main suit and as such, he may be given an opportunity to contest the suit. He also cited a decision reported in 1995 (1) LAW WEEKLY 141 (Annapoorni v. Janaki), wherein it was held that this Court could suo motu invoke Section 115 of C.P.C. and Article 227 of the Constitution of India to straight-a-way set aside the decree passed by the trial Court, which had not been passed in accordance with law.

16. In 1995 (1) LAW WEEKLY 141 (supra), it was held as under :

"When this Court finds that a decree suffers from an error of law apparent on the face of the record owing to non-application of mind of the Court to the relevant principles of law, this Court cannot keep silent and

allow the decree to be in force, particularly, when it causes grave injustice."

17. On going through the entire records, inclusive of 'A' Diary and 'B' Diary extracts, it is clear that the trial Court had hastened to pass the decree in favour of the plaintiff, without following the required procedure contemplated under the Code of Civil Procedure. Even though the order passed in I.A.No.1419 of 1988 imposing costs for condoning the delay was not complied with, the trial Court, after 10 years, allowed the application to condone the delay in filing the application to restore the suit, which was dismissed on 18.08.1988. Similarly, the defendants were set exparte on 15.03.2001. When the matter was taken up for exparte evidence on 28.03.2001, the trial Court suo motu set aside the exparte decree and reopened the case and went on trial.

18. As indicated above, counsel for the defendants also did not cross-examine the witness on the basis of the written statement filed by the defendants. Thus, it is clear that the judgment was pronounced hurriedly on 09.04.2001 for the reasons best known to the trial Court. This biased conduct, on the part of the Principal District Munsif, Bhavani, is highly condemnable. The misconduct on the part of the erstwhile counsel Mr.A.M.Meeran, who has admitted mistakes through his affidavit, is also unethical and punishable.

19. Learned counsel for the petitioner requests this Court to give an opportunity for the petitioner to contest the suit, by setting aside the judgment pronounced on 09.04.2001, as the same is illegal.

20. Learned counsel for the respondent/plaintiff also would admit that the required procedures have not been followed by the trial Court and as such, the judgment and decree may be set aside and the matter can be remanded for trial.

21. Accordingly, the order in I.A.No.1419 of 1988 dated 07.03.1989 and the judgment and decree dated 09.04.2001 are set aside and the suit is restored and consequently, the matter is remanded to the trial Court for fresh disposal. The trial Court will give an opportunity to both the parties and dispose of the suit as expeditiously as possible, without giving any room for similar complaints from any quarters.

22. Though this Court initially thought of referring the matter to the Bar Council with regard to the misconduct of the counsel Mr.A.M. Meeran, since he realised his mistakes and also filed affidavit, giving undertaking that he would not commit such mistakes in future, this Court felt that it would be enough if some costs is imposed. Accordingly, he was directed to pay a sum of Rs.2,500/- as costs to the petitioner. Now, it has been reported before this Court that costs were paid to the petitioner and the same were received by the petitioner on 14.01.2003. To this effect, a memo has also been filed by Mr.A.M. Meeran.

23. With the above observations, these Civil Revision Petitions are allowed. No costs.

Index : Yes
Internet : Yes

dixit

To :
The Principal District Munsif,
Bhavani.